

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

(Watsonville, CA)

WASTE MANAGEMENT OF SANTA CRUZ,
A DIVISION OF WASTE MANAGEMENT
COLLECTION AND RECYCLING , A
SUBSIDIARY OF WASTE MANAGEMENT INC.

Employer¹

and

Case No. 32-RC-4894

OPERATING ENGINEERS LOCAL
UNION NO. 3, INTERNATIONAL
UNION OF OPERATING ENGINEERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,² the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find that the Employer, a California Corporation, is engaged in the collection and recycling of refuse at its location in Watsonville, California. During

the previous twelve months, the Employer has performed services valued in excess of \$50,000 for an Employer which meets one or more of the Board's standards for assertion of jurisdiction on a direct basis. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find that the Union involved is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Petitioner seeks to represent a unit limited to route drivers that pick up waste materials and agrees that one container delivery employee, Roger Mahutga, is properly included in the unit. The Employer contends that its operation is so functionally integrated that the appropriate unit must also include all operations employees, including drivers, container delivery employees and operations support, all maintenance employees and equipment operators. The parties agree that any employee not included in the operations, maintenance or equipment operators departments should be excluded.

THE FACTS

The employer operates a refuse hauling operation that services both residential and commercial customers. The Employer's three main refuse hauling contracts are with Santa Cruz County, the City of Scotts Valley and the City of Capitola. The Employer maintains two facilities in Watsonville, California; the operational department is located at 1340 West Beach Street and the administrative/clerical department is located at 735 West Beach Street. The employees at the 735

¹ The Employer's and Petitioner's names appear as stipulated at hearing.

² The Employer's brief has been considered.

West Beach Street facility are not at issue in this proceeding. There has never been a collective bargaining agreement between any labor organization and the Employer at the 1340 West Beach Street facility.

The Employer employs a total of ninety employees, sixty of which work in the hauling operations.³ The Employer divides its hauling operations into three departments: operations, maintenance and equipment operators. The operations department has approximately forty-four drivers, two container delivery employees and two operation support employees.⁴ The maintenance department has two container maintenance employees, two lube mechanics, one lead mechanic, three mechanic III employees, one parts clerk and one truck washer. There are two employees in the equipment operators department. Two operations supervisors, Tom Patron and Charles Reading, oversee the drivers. The maintenance supervisor, Luis Reynoso, oversees the maintenance employees.⁵ All three supervisors report directly to the General Manager, Jim Moresco, who oversees the entire operation. The supervisor of one department will supervise employees in another department only when that department's regular supervisor is absent.

The employer operates full route service on the weekdays, a reduced service of approximately two to six routes on Saturdays and one three-hour route on Sundays. The Employer requires that there be at least one dispatcher and one maintenance person on duty anytime two or more route vehicles are in operation. The facility is not staffed on Sundays and the General Manager is on call to supervise any problems which arise on the Sunday route.

The Employer provides all its employees with the same set of benefits, including vacation, holidays, and sick days and the Employer offers employees the same options for medical, dental

³ The parties submitted Joint Exhibit 1, which lists the 60 employees involved in the Employer's hauling operations. The parties agree that persons not appearing on Joint Exhibit 1, such as dispatchers and office clerical employees, are not included in either party's proposed unit.

and other insurance. The Employer utilizes one payroll system and employees are covered under the same pay periods. However, there are separate time clocks, one at 735 West Beach, and two at 1340 West Beach Street: one for drivers and equipment operators and another for maintenance employees. There are two employee break rooms located at 1340 West Beach Street for use by all employees.

Vacations are determined using several factors which include seniority, classification and date of request. Requests for vacation made prior to February 28th are determined according to seniority if more than two persons from the same classification, such as roll off driver or residential route driver, requested the same vacation. Requests made after March 1st are determined on a first come, first served basis with the caveat that not more than two employees with the same classification will be allowed vacation at the same time. Requests for vacation by maintenance employees do not affect drivers eligibility for vacation at the same time.

The Employer provides uniforms for most operations personnel. The driver's uniform consists of a long-sleeved or short-sleeved shirt that has reflective tape running down the arms, T-shirts, gray pants, driving gloves, hard hat, a vest and a boot allowance. Mechanics uniforms consist of green pants, a shirt made of a different material without reflective tape, hard hat, a different type of gloves and a vest. Administrative employees are not required to wear uniforms. Patron is responsible for ordering all of the Employer's uniforms and supervisors or personnel from other departments report to Patron if there is any problem with uniforms.

The Employer classifies its drivers according to the driver's route type; there are four roll-off drivers, 7 commercial route drivers, 29 residential/recycle drivers and 4 recycle drivers. Drivers are assigned to routes on a permanent basis and other than the roll-off drivers, who service special

⁴ At the time of the hearing, the Employer was trying to fill openings for eight driver positions.

⁵ The parties have stipulated that Patron, Reading and Reynoso are statutory supervisors.

orders for large roll-off containers, drivers have regular routes. Drivers are required to have a valid Class B license, pass a driving test, a map reading exam and route sheet reading exam. All drivers receive \$17.52 per hour after a 90-day probation period, in which they receive approximately \$15 per hour, and are the only employees eligible for a quarterly \$200 bonus, which is based at least in part on their safety record. Patron and Reading are responsible for hiring drivers. Patron administers and evaluates both the exams and the road test. Reading makes route assignments and schedules drivers. In addition to the rules and policies set forth in the Employee Handbook, the operations supervisors prepare written instructions or policies which are issued solely to drivers.

Driver's start times vary from 4:15 a.m. to 5:30 a.m. depending upon the noise ordinances of the locality they service. Nearly 75% of the drivers begin their shift between 4:15 and 4:30 a.m. Prior to leaving for their routes, drivers inspect their vehicles and pick up their route sheets. Over 90% of drivers work time is spent away from the facility servicing routes. During the day, drivers are entitled one lunch break and two breaks, which they take in the field. Upon completing their routes, drivers return to the facility and check in with dispatch employees to be "cleared" out. If their route is completed and they are not needed to help a driver on another route, the drivers are cleared to leave. Drivers are guaranteed pay for eight hours regardless of whether they finish their route early and go home.

Drivers are required to complete a daily Vehicle Condition Report (VCR) to report any problems with the vehicle. Completed VCR forms are submitted to the maintenance department and are used to determine whether the vehicle requires any repairs or maintenance. Maintenance mechanics sign off on the VCR once a repair is completed and the driver signs off that the repair was completed prior to taking the vehicle out the next morning. Drivers may also speak directly with maintenance employees to explain any mechanical problems not sufficiently described in the

VCR or call in from their route to speak with a mechanic regarding any problem they are having in the field. Drivers are not trained on repair work, lubrication, or maintenance of vehicles and have little to no contact with maintenance persons outside the context of vehicle breakdowns.

Arnett Young, the safety supervisor, performs route observations and evaluates driver performance. He forwards written observations and reports of infractions to operations supervisors. The operations supervisors also make written driver evaluations and sometimes have maintenance manager, Reynoso, check to see if there is any driver error related to maintenance problems. These evaluations do not affect driver's pay, since they all receive the same wage rate. However, the evaluations can affect a driver's eligibility for safety bonuses.

The Employer operates on a one driver per vehicle basis and generally does not have helpers working with drivers. However, on numerous occasions the Employer has assigned helpers to assist drivers who are on restricted duty due to injury or medical disability. The helpers assist the drivers by dumping cans and containers. In one instance, a driver on medical disability was placed on container delivery as an accommodation. On another occasion, a helper was assigned to assist a driver who was unfamiliar with the route. Recently, the Employer has assigned helpers to two regular Friday routes in Watsonville which use a small rear-loader vehicle on mountain roads to compensate for the elimination of a route. The Employer has used drivers-in-training as helpers as well as container maintenance employee, Alejandro Clavario, and the truck washer, Martin Magana.

Two operations department employees, Roger Mahutga and Eric Nelson, are employed as container drivers. They deliver and retrieve containers from residential and commercial customers and complete logs to report damaged containers.⁶ Both container drivers have regularly scheduled

⁶ Carts are 35 to 96 gallon wheeled plastic carts and are generally used by residential customers. Containers are one to six yard metal bins and are generally used by commercial customers. Unless otherwise specified, the term "container"

service areas. Roger Mahutga has a Class B license and has worked on other routes, such as commercial routes, when needed.⁷ Eric Nelson, who the Union seeks to exclude, does not have a Class B license and drives the smaller container delivery truck, which only requires a Class C license. Nelson begins work at 4:30 a.m. and spends the vast majority of his day delivering carts. He wears a driver's uniform and earns \$15 per hour.

There are two operational support employees, Carlos Ortiz and Arnett Young, who are listed in the operations department. These employees do not have driver routes and do not wear uniforms. Carlos Ortiz works in dispatch taking calls from drivers, operates the GTS scale used to weigh recycled materials and assists with container deliveries. When working in dispatch, Ortiz takes calls from drivers in the field who have problems or questions about the route or customers. Thomas Haggerty, whom the parties agree is excluded from the unit, is the only other employee working as a dispatcher. The Employer requires full time coverage for the dispatcher position, so either Haggerty or Ortiz must always be on duty as dispatch when more than one route driver is out and must stay until the last truck comes in each night. Haggerty and Ortiz rotate who will work until the last truck comes in each night and also rotate Saturday shifts. Ortiz assists with container delivery when an order must be filled the same day and has filled in "instabin" container delivery which involves delivering containers to customers for weekend use. There is no specific evidence in the record regarding how much of Ortiz' time is spent in each of his job duties beyond the General Manager's testimony that recently Ortiz had been filling in on container delivery "almost once or twice a week." Ortiz does not have a Class B license and drives a small container delivery truck which only requires a Class C license. Ortiz works 7:00 a.m. to 4:00 p.m., often works overtime and works earlier as needed. He is supervised by Patron and Reading, even when he is

will be used herein to refer to both carts and containers.

⁷ The Union does not dispute that Mahutga is properly within its proposed driver's unit.

working as a dispatcher. He earns \$14 dollars an hour. It is unclear whether he receives the same wage when he is performing container delivery.⁸ Ortiz does not perform any refuse collection.

Arnett Young's job title is safety supervisor and he is classified in the operation's department as operational support. He is responsible for overlooking the safety of the entire facility, holds weekly employee safety meetings, ensures that the operation is in compliance with safety laws and requirements, handles insurance coverage and accident claims and performs route observations. Young is supervised by the general manager. He has no fixed schedule and his hours are scheduled around his particular duties and school schedule. He earns approximately \$15 per hour and has his own office at the 1340 West Beach Street facility. He does not have a Class B license nor does he drive a refuse vehicle.

The Employer's maintenance department consists of one lead mechanic, three mechanic IIIs, two lube mechanics, two container maintenance employees, a parts clerk and truck washer. The department is supervised by Luis Reynoso, the maintenance supervisor. Reynoso is responsible for screening and hiring maintenance department employees. Mechanics are required to have at least two to three years of maintenance mechanic experience and are classified as either lube mechanic, Mechanic III, Mechanic II, or Mechanic I according to their level of experience. The highest level mechanics are required to have experience with diesel engines, electrical systems and brakes. Mechanics wages are based on the mechanic level and promotions within the mechanics levels are determined by Reynoso. No maintenance employees are eligible for the quarterly \$200 safety bonus. Mechanics are not required to have Class B license to be hired⁹ and

⁸ The General Manager testified both that he earns \$14 per hour regardless of what particular job duty he is performing and that he gets container delivery wages, \$16-something an hour, when he does container delivery.

⁹ Mechanics "are required to have a Class B license as a condition of their employment" but are not required to have one at the time of hire. Mechanics are required to "start the process" of obtaining a Class B license at hiring, though not all mechanics have obtained them. No written job descriptions for the mechanic positions were presented at hearing, despite the fact that they exist, and there is no evidence in the record regarding how many mechanics currently have Class B licenses.

are not required to take a driving test or map or route sheet reading test. Mechanics are required to own their own hand tools, including wrenches, pliers, press wrenches, and screwdrivers, which can cost anywhere from \$1,000 to \$5,000 dollars. The Employer supplies specialty tools and heavier equipment needed to repair the trucks. The Employer also provides safety equipment. Luis Reynoso is responsible for purchasing the Employer's safety equipment and consults with supervisors from other departments regarding equipment needs.

The Employer requires that there be at least one maintenance person on duty whenever two vehicles are out in the field. While a maintenance mechanic may sometimes work without direct supervision, there is always a supervisor except on Sunday, when there is usually not more than one driver on duty. Certain aspects of the mechanics' work require them to drive a vehicle and in some cases a vehicle requiring a Class B license. For example, mechanics perform road tests following repairs and have had to switch vehicles with a driver en route who has a broken down vehicle. In instances when a mechanic picks up a vehicle for repair, the truck may need to be taken to the landfill and dumped. There is no evidence in the record regarding how often these events take place. Mechanics do not regularly fill in for drivers, however, in July 2000, Rafael Garnica, a maintenance mechanic, was assigned to drive a roll-off truck for approximately one and a half days. Drivers do not fill in as mechanics.

Joe Ribeiro, the lead mechanic, assigns work orders to the mechanics and insures that repairs are completed properly. Ribeiro works the swing shift, 12:30 p.m. to 8:30 p.m. and earns approximately \$19 to \$20 per hour. There are currently two lube mechanics¹⁰ who perform minor repairs and regular service, such as changing the oil or lubing or greasing the trucks. Lube mechanics earn approximately \$16 per hour and work the swing shift from 12:30 p.m. to 8:30 p.m.

¹⁰ At the time of the hearing, the General Manager testified that he believed the Employer had recently hired a new maintenance mechanic and presumed that person was hired as a lube mechanic.

One lube mechanic, Isaias Reynoso, requested and was granted a transfer from driver to lube mechanic, which resulted in a loss of more than two dollars an hour. There are three Mechanic III employees, a slightly higher level mechanic than a lube mechanic, who perform repair work, which includes transmission work and brake work. Mechanic IIIs perform road calls if a driver calls in with a problem that can be repaired in the field. There is no evidence in the record regarding how often mechanics are required to go into the field. One mechanic III employee begins his shift at 4:00 a.m., the others work the swing shift from 12:30 p.m. to 8:30 p.m. Mechanic IIIs are paid approximately \$16 to \$17 per hour.

There are two container mechanics, Alejandro Calvario and Arturo Hernandez, in the maintenance department and both are supervised by Luis Reynoso. Calvario washes carts, containers and bins. He works an eight-hour shift which begins at 6:00 a.m. on weekdays, occasionally works on Saturdays, and earns less than drivers.¹¹ Calvario has worked as a driver's helper on several occasions. On those occasions he is permitted to go home at the end of the route and is paid for eight hours regardless of whether he worked a full eight hours. Hernandez is a welder and is responsible for welding containers. He begins work at 7:30 a.m. on weekdays, occasionally works on Saturdays, and earns approximately \$14 an hour. He usually works nine and a half to ten hours to be able to fulfill his obligations.¹²

The maintenance department has one parts clerk, Robert Mello, who is responsible for ordering parts for the repair of vehicles and filling out repair work orders. He reviews the VCR forms and, if necessary, prepares a repair work order, which he forwards to the maintenance manager. Mello works from 7:30 a.m. to 4:30 p.m., earns around \$18 an hour and is not required to wear a uniform. There is one truck washer, Martin Magana, in the maintenance department who

¹¹ Calvario's wages are two or more dollars less than drivers.

¹² Hernandez only works until a job order is completed and does not have to work eight hours to get eight hours of pay.

is responsible for washing carts, bins, and vehicles. He works an eight-hour shift beginning at 7:30 a.m., earns around \$10 per hour, and wears a driver's uniform with a rubber suit over it. He does not have a Class B license. On at least two occasions, Magana has worked as a driver's helper.

The equipment operators department is composed of two employees, Pablo Atilano Garcia, an equipment operator, and Rito Ramirez, the lead equipment operator. The equipment operators use bobcat loader vehicles to transfer offloaded recyclable materials for processing. Ramirez also "spots" trucks as they dump recyclable materials and uses a forklift to offload containers. The Employer previously maintained a Material Recovery Facility (MRF) at the 1340 West Beach Street facility where the recycled materials were processed and sorted for sale. At the time of the hearing, the facility had been closed and recycled materials were being sent to the Employer's Castroville, California Material Recovery Facility for processing. Prior to the closure of the MRF facility, the operators pushed recycled materials into bunkers for processing at the MRF, worked an eight-hour shift starting at 7:30 a.m., earned around \$14 per hour and were not eligible for the quarterly \$200 bonus. At the time of the hearing, the Employer's facility was in the process of becoming a transfer station, where the materials will be dumped on the floor, loaded onto a conveyor belt by an equipment operator, and transferred into a truck to be moved to the Castroville facility for processing. At the time of the hearing, the conveyor belt operation had not begun and it had not been determined whether the transfer station operations were going to remain part of the Employer's hauling operations. The Employer anticipates that the equipment operators will be part of a new operation and will be supervised by Dan (last name unknown), who is in charge of operating the Castroville Material Recovery Facility.

Drivers, maintenance and MRF employees, which includes the equipment operators, are required to attend regular safety meetings. The Employer holds three separate safety meetings for

However, this policy is not in writing and Hernandez has not been informed of the policy.

each day a safety meeting is scheduled. The first meeting is scheduled at 4:20 a.m. and is generally attended by operations employees and the one mechanic who comes on duty early, the second meeting is held at 4:50 a.m. and is generally attended by drivers, the third is scheduled at 12:30 p.m. and is generally attended by maintenance employees. All employees sign the same attendance sheet regardless of which meeting they attend. The Employer prepares separate agendas for the driver, maintenance and MRF departments, however each agenda will include some of the same issues that concern employees from more than one department. Employees are trained on equipment they use in their jobs regardless of what department they are in, for example, in December 1999, both equipment operators and two maintenance mechanics were trained on the forklift. In 1997, an outside vendor held a training for mechanics and drivers on new trucks purchased by the company. The vendor has held additional training sessions with the maintenance department employees to address recurring mechanical problems.

POSITION OF THE PARTIES

As noted, Petitioner seeks to represent a unit limited to route drivers that pick up waste materials and agrees that one container delivery employee, Roger Mahutga, is properly included in the unit. The Employer contends that its operation is so functionally integrated that the appropriate unit must also include all operations employees, including drivers, container delivery employees and operations support, all maintenance employees and equipment operators. The parties agree that any employee not included in the operations, maintenance or equipment operators departments should be excluded.

ANALYSIS

The issue raised by the parties' conflicting unit contentions is simple: is the petitioned-for unit *an* appropriate unit for the purpose of collective bargaining under the Board's traditional community-of-interest analysis? If that question can be answered in the affirmative, then it does not matter that the larger unit sought by the Employer may also be appropriate. See *Morand Bros., Beverage Co.*, 91 NLRB 409, 418 (1950), *Kalamazoo Paper Box Corp.*, 136 NRB 134, 137 (1962); and *A. Russo & Sons, Inc.*, 329 NLRB No. 43 (1999).

In analyzing this issue, I have considered the evidence that the employees in the Union's proposed driver's unit and the employees in the Employer's proposed unit all have certain common interests, i.e., they are provided the same basic employment benefits, via the Employee Handbook, and are bound to the same rules and regulations. They are all covered under the same pay period and utilize the same time keeping system and are required to punch in and out. However, the significance of these common interests is lessened by the fact that other employees not included in the either proposed unit, e.g., the dispatchers and clerical employees, also share these same interests.

There are some factors present to support the inclusion of maintenance employees in the drivers unit, such as common benefits, some overlapping areas of training, some instances where maintenance employees have assisted on driver's routes, and the interaction between drivers and the maintenance employees who repair their vehicles. However, the unit requested by Petitioner which would exclude them is *an* appropriate unit as well. The drivers perform a separate function and possess special skills and qualifications. They work away from the facility most of the day and are subject to separate immediate supervision. They are paid the same fixed wage rate and are eligible for a quarterly bonus, the only classification paid in this manner. Maintenance employees generally

spend their entire day at the facility and are paid according to a graduated wage scale. The mechanics have received specialized training and education and are required to own their own tools. Although the other maintenance positions, namely the parts clerk, truck washer and container maintenance employees are primarily unskilled, they perform functions which, like those of the mechanics, are related to the repair and maintenance of the Employer's equipment and share common supervision with mechanics. While there are instances of overlapping training, particularly on safety issues, there are separate training agendas for each department and the drivers and the mechanics generally attend separate training meetings.

The Employer argues that mechanics perform common duties with drivers, citing evidence of driving by mechanics and the fact mechanics are compelled to obtain a Class B license. However, most of the driving cited by the Employer is not the type of driving performed by the drivers in the unit. Rather, it is driving performed in connection with test drives and the emergency repair of vehicles. In similar situations, the Board has deemed such driving insufficient to require inclusion of mechanics in a petitioned for drivers unit. See *Overnite Transportation*, 322 NLRB 347, 347 (1996). I have also considered the evidence that maintenance employees occasionally work as "helpers" on a limited number of routes, that these two groups of employees are in contact with each other to communicate regarding breakdowns, and that on rare occasions a maintenance employee may end up doing the work of a driver. However, I find that this evidence of contact and/or interchange between drivers and maintenance employees, while perhaps sufficient to establish that the Employer's larger unit may also be appropriate, is insufficient to establish that a unit limited to drivers is *inappropriate*. See *Overnite Transportation*, 322 NLRB 347, 347 (1996). In coming to this conclusion, I note that the evidence as a whole indicates that, with the limited exception of maintenance employees providing occasional assistance to drivers when one is on

limited duty or on a particularly complicated route, drivers and maintenance employees have very defined and distinct work duties and tasks and there is very little routine interchange in their work assignments.¹³ In addition, the maintenance employees have work hours and work shifts that are distinct from the drivers. Finally, the maintenance employees are categorized by the Employer in a separate department within its broader operations and while there is some evidence of occasional substitute supervision by a supervisor from another department, the mechanics regular supervision is separate from that of the drivers. Accordingly, I conclude that maintenance employees do not share a sufficient community of interest with the drivers to mandate their inclusion in the unit.

The equipment operators also do not share a sufficient community of interest with the drivers to warrant their inclusion in the unit. While the equipment operators utilize vehicles in their work, they are forklifts and bobcats as opposed to refuse collection trucks. The equipment operators spend their entire workday in the facility and do not have driving routes. They earn less than drivers, are not eligible for bonuses, work different hours and are subject to separate supervision. In fact, at the time of the hearing, it was unclear if they would continue working in the Employer's hauling operations and it was expected that they would be supervised by someone outside the Employer's hauling operations.

The Petitioner contends that Eric Nelson, a container driver, should be excluded from the Unit because he lacks a community of interest with the drivers particularly because he doesn't have a class B license and can only operate a small vehicle, does not work with refuse, doesn't have a route schedule, earns less than drivers and is not eligible for a bonus. Nelson is one of only two

¹³ In this regard, there is no evidence of any daily transfers of employees between the drivers and maintenance departments. In addition, the record establishes that, but for one instance in 2000, maintenance employees that have been "assigned" to driver routes have acted strictly as helpers and have not taken on the full duties of drivers and were not, in fact, driving the vehicles. Moreover, but for one instance when an employee requested a change from driver to lube mechanic, which is essentially a demotion as it resulted in loss of pay, there is no evidence of permanent transfers of maintenance employees into driver's positions or *vice-versa*.

container drivers in the Employer's operations department and the Union agrees that the other container driver (Mahutga) is properly included in the unit. The record reflects that both employees deliver and retrieve containers, not refuse, from regularly scheduled service areas. In fact, the only difference between the two employees represented in the record is that Mahutga can operate the larger vehicle which requires a Class B license and has worked other driver routes, where as Nelson cannot. While it is true that Nelson earns approximately two to three dollars less than drivers, there is no evidence in the record regarding the wages earned by Mahutga other than that neither employee is eligible for the driver bonus. On the other hand, Nelson works the same hours as the drivers, wears the same uniform, is under the same supervision, and spends the vast majority of his day in a vehicle away from the facility. Moreover, excluding Nelson would likely result in a residual unit of one employee, a result the Board has long found to be undesirable. *North Jersey Newspapers Company*, 322 NLRB 394, 396 (1996). What little evidence that was presented tends to show that he performs the same type of work as Mahutga, albeit presumably on a smaller scale, and is the only employee not included in the Petitioner's proposed unit who spends the vast majority of his time working in a vehicle outside the facility. Accordingly, I find that Nelson shares a community-of-interest with the other employees in the petitioned-for unit and is therefore included.

The operation support employees do not share a sufficient community of interest with the drivers to warrant their inclusion in the unit. Arnett Young, the safety supervisor, has separate qualifications, performs primarily instructional and administrative work, does not wear a uniform, has a separate schedule and separate supervision. While he does some driving in his job, namely to observe drivers' work out in the field, this type of driving is completely unrelated to the type of driving performed by the drivers in the unit. Other than their shared classification in the operations

department and mutual employee benefits, there is little evidence of any community of interest between Young and the drivers. Carlos Ortiz performs several different types of work including some container delivery work, which is similar to the work of two employees in the unit. However, the record as a whole suggests that his primary duties are that of dispatching. While his work as dispatcher is related to drivers' work and brings him into regular contact with employees in the unit, his work in this area is identical to that of another employee (Haggerty) whom the parties agree is properly excluded from the unit. Accordingly, I find that he is properly excluded from the unit.

In light of all of the above, I find that the Employer's driver employees, including both container delivery employees, share a sufficient community of interest such that they constitute *an* appropriate unit for purposes of collective bargaining. See *Overnite Transportation*, 322 NLRB 347, 347 (1996). Accordingly, I find that the following employees of the Employer constitute an appropriate unit within the meaning of Section 9(b) of the Act and that it is appropriate to direct an election in such a unit:

All full-time and regular part-time drivers, including container delivery employees, at the Employer's Watsonville, California facility; excluding all other employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.¹⁴ Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on

vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by OPERATING ENGINEERS LOCAL UNION NO. 3, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employers with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before July 30, 2001. No extension of time to file this list shall be granted except in extraordinary

¹⁴ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by August 6, 2001.

DATED AT Oakland, California this 23rd day of July , 2001.

James S. Scott
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